

Senate File 2268

S-5058

1 Amend Senate File 2268 as follows:

2 1. By striking everything after the enacting clause and  
3 inserting:

4 <Section 1. Section 321.216C, Code 2020, is amended to read  
5 as follows:

6 **321.216C Use of driver's license or nonoperator's**  
7 **identification card by underage person to obtain tobacco, tobacco**  
8 **products, ~~alternative nicotine products, vapor products,~~ or**  
9 **cigarettes.**

10 A person who is under the age of ~~eighteen~~ twenty-one,  
11 who alters or displays or has in the person's possession  
12 a fictitious or fraudulently altered driver's license or  
13 nonoperator's identification card and who uses the license  
14 or card to violate or attempt to violate section 453A.2,  
15 subsection 2, commits a simple misdemeanor punishable as a  
16 scheduled violation under [section 805.8A, subsection 4](#). The  
17 court shall forward a copy of the conviction to the department.

18 Sec. 2. Section 453A.1, subsections 1, 23, 28, and 29, Code  
19 2020, are amended to read as follows:

20 1. "*Alternative nicotine product*" means a product, not  
21 consisting of or containing tobacco, that provides for the  
22 ingestion into the body of nicotine, whether by chewing,  
23 absorbing, dissolving, inhaling, snorting, or sniffing, or  
24 by any other means. "*Alternative nicotine product*" does not  
25 include cigarettes, ~~tobacco products, or vapor products,~~ or  
26 a product that is ~~regulated~~ authorized for sale as a drug or  
27 device by the United States food and drug administration under  
28 chapter V of the federal Food, Drug, and Cosmetic Act.

29 23. "*Retailer*" shall mean and include every person in  
30 this state who shall sell, distribute, or offer for sale for  
31 consumption or possess for the purpose of sale for consumption,  
32 ~~cigarettes, alternative nicotine products, or vapor products~~  
33 irrespective of quantity or amount or the number of sales.

34 28. "*Tobacco products*" means any product, or component,  
35 part, or accessory of such product, containing, made in

1 whole or in part from, ordinarily derived from, or designed  
2 to deliver tobacco, a tobacco substitute, or nicotine,  
3 and intended for human consumption whether by chewing,  
4 absorbing, dissolving, inhaling, snorting, sniffing, ingesting,  
5 vaporizing, or by any other means. "Tobacco products" includes  
6 but is not limited to alternative nicotine products and vapor  
7 products; cigars; little cigars as defined in section 453A.42,  
8 subsection 6; cheroots; stogies; periques; granulated; plug  
9 cut, crimp cut, ready rubbed, and other smoking tobacco; snuff,  
10 snuff flour; cavendish; plug and twist tobacco; fine-cut and  
11 other chewing tobaccos; shorts; or refuse scraps, clippings,  
12 cuttings and sweepings of tobacco, and other kinds and forms of  
13 tobacco, prepared in such manner as to be suitable for chewing  
14 or smoking in a pipe or otherwise, or both for chewing and  
15 smoking; but does not mean cigarettes.

16 29. "Vapor product" means any ~~noncombustible product,~~  
17 ~~which may or may not contain nicotine, that employs a heating~~  
18 ~~element, power source, electronic circuit, or other electronic,~~  
19 ~~chemical, or mechanical means, regardless of shape or size,~~  
20 ~~that can be used to produce vapor from a solution or other~~  
21 substance or device that may be used to deliver any aerosolized  
22 or vaporized substance to the person using the device. "Vapor  
23 product" includes an electronic cigarette, electronic cigar,  
24 electronic cigarillo, electronic pipe, electronic hookah, a  
25 vape pen, or similar product or device, and any cartridge or  
26 ~~other container of a solution or other substance, which may~~  
27 ~~or may not contain nicotine, that is intended to be used with~~  
28 ~~or in an electronic cigarette, electronic cigar, electronic~~  
29 ~~eigarillo, electronic pipe, or similar product or device~~  
30 includes any component, part, or accessory of the product  
31 or device, and any substance intended to be aerosolized or  
32 vaporized during the use of the device, whether or not the  
33 substance contains nicotine. "Vapor product" does not include  
34 a product ~~regulated~~ authorized for sale as a drug or device by  
35 the United States food and drug administration under chapter V

1 of the federal Food, Drug, and Cosmetic Act.

2 Sec. 3. Section 453A.2, subsections 1, 2, 3, and 8, Code  
3 2020, are amended to read as follows:

4 1. A person shall not sell, give, or otherwise supply any  
5 tobacco, tobacco products, ~~alternative nicotine products, vapor~~  
6 ~~products,~~ or cigarettes to any person under eighteen twenty-one  
7 years of age.

8 2. A person under eighteen twenty-one years of age shall  
9 not smoke, use, possess, purchase, or attempt to purchase any  
10 tobacco, tobacco products, ~~alternative nicotine products, vapor~~  
11 ~~products,~~ or cigarettes.

12 3. Possession of tobacco, tobacco products, ~~alternative~~  
13 ~~nicotine products, vapor products,~~ or cigarettes by an  
14 individual under eighteen twenty-one years of age does not  
15 constitute a violation under [this section](#) if the individual  
16 under eighteen twenty-one years of age possesses the tobacco,  
17 tobacco products, ~~alternative nicotine products, vapor~~  
18 ~~products,~~ or cigarettes as part of the individual's employment  
19 and the individual is employed by a person who holds a valid  
20 permit under [this chapter](#) or who lawfully offers for sale or  
21 sells cigarettes or tobacco products.

22 8. a. A person shall not be guilty of a violation of this  
23 section if conduct that would otherwise constitute a violation  
24 is performed to assess compliance with tobacco, tobacco  
25 products, ~~alternative nicotine products, vapor products,~~ or  
26 cigarette laws if any of the following applies:

27 (1) The compliance effort is conducted by or under the  
28 supervision of law enforcement officers.

29 (2) The compliance effort is conducted with the advance  
30 knowledge of law enforcement officers and reasonable measures  
31 are adopted by those conducting the effort to ensure that use  
32 of tobacco, tobacco products, ~~alternative nicotine products,~~  
33 ~~vapor products,~~ or cigarettes by individuals under eighteen  
34 twenty-one years of age does not result from participation by  
35 any individual under eighteen twenty-one years of age in the

1 compliance effort.

2     *b.* For the purposes of [this subsection](#), “*law enforcement*  
3 *officer*” means a peace officer as defined in [section 801.4](#) and  
4 includes persons designated under [subsection 4](#) to enforce this  
5 section.

6     Sec. 4. Section 453A.4, subsection 1, Code 2020, is amended  
7 to read as follows:

8     1. If a person holding a permit under [this chapter](#) or an  
9 employee of such a permittee has a reasonable belief based on  
10 factual evidence that a driver’s license as defined in section  
11 321.1, subsection 20A, or nonoperator’s identification card  
12 issued pursuant to [section 321.190](#) offered by a person who  
13 wishes to purchase tobacco, tobacco products, ~~alternative~~  
14 ~~nicotine products, vapor products,~~ or cigarettes is altered  
15 or falsified or belongs to another person, the permittee or  
16 employee may retain the driver’s license or nonoperator’s  
17 identification card. Within twenty-four hours, the card shall  
18 be delivered to the appropriate city or county law enforcement  
19 agency of the jurisdiction in which the permittee’s premises  
20 are located, and the permittee shall file a written report of  
21 the circumstances under which the card was retained. The local  
22 law enforcement agency may investigate whether a violation  
23 of [section 321.216](#), [321.216A](#), or [321.216C](#) has occurred. If  
24 an investigation is not initiated or probable cause is not  
25 established by the local law enforcement agency, the driver’s  
26 license or nonoperator’s identification card shall be delivered  
27 to the person to whom it was issued. The local law enforcement  
28 agency may forward the card with the report to the state  
29 department of transportation for investigation, in which  
30 case, the state department of transportation may investigate  
31 whether a violation of [section 321.216](#), [321.216A](#), or [321.216C](#)  
32 has occurred. The state department of transportation shall  
33 return the card to the person to whom it was issued if an  
34 investigation is not initiated or probable cause is not  
35 established.



1 kind of permit, and shall authorize the sale of cigarettes,  
2 or alternative nicotine products, or vapor products through  
3 delivery sale, in this state subject to the limitations and  
4 restrictions herein contained. The retail permits shall  
5 be upon forms furnished by the department or on forms made  
6 available or approved by the department.

7 10. *Permit displayed.* The permit shall, at all times,  
8 be publicly displayed by the distributor, wholesaler, or  
9 retailer at the place of business so as to be easily seen by  
10 the public and the persons authorized to inspect the place  
11 of business. The proprietor or keeper of any building or  
12 place where cigarettes, ~~alternative nicotine products, vapor~~  
13 ~~products,~~ tobacco, or tobacco products are kept for sale or  
14 with intent to sell, or where alternative nicotine products  
15 or vapor products are kept for delivery sale or with intent  
16 to sell, shall upon request of any agent of the department or  
17 any peace officer exhibit the permit. A refusal or failure to  
18 exhibit the permit is prima facie evidence that the cigarettes,  
19 alternative nicotine products, vapor products, tobacco, or  
20 tobacco products are kept for sale or with intent to sell in  
21 violation of [this subchapter](#).

22 Sec. 7. Section 453A.36, subsection 6, Code 2020, is amended  
23 to read as follows:

24 6. Any sales of tobacco, tobacco products, ~~alternative~~  
25 ~~nicotine products, vapor products,~~ or cigarettes made through a  
26 cigarette vending machine are subject to rules and penalties  
27 relative to retail sales of tobacco, tobacco products,  
28 ~~alternative nicotine products, vapor products,~~ and cigarettes  
29 provided for in [this chapter](#). Cigarettes shall not be sold  
30 through any cigarette vending machine unless the cigarettes  
31 have been properly stamped or metered as provided by this  
32 subchapter, and in case of violation of this provision, the  
33 permit of the dealer authorizing retail sales of cigarettes  
34 shall be revoked. Payment of the permit fee as provided  
35 in [section 453A.13](#) authorizes a cigarette vendor to sell

1 tobacco, tobacco products, ~~alternative nicotine products, vapor~~  
2 ~~products,~~ and cigarettes through vending machines. However,  
3 tobacco, tobacco products, ~~alternative nicotine products,~~  
4 ~~vapor products,~~ and cigarettes shall not be sold through a  
5 vending machine unless the vending machine is located in a  
6 place where the retailer ensures that no person younger than  
7 ~~eighteen~~ twenty-one years of age is present or permitted to  
8 enter at any time. Tobacco, tobacco products, ~~alternative~~  
9 ~~nicotine products, vapor products,~~ and cigarettes shall not be  
10 sold through any cigarette vending machine if such products  
11 are placed together with any nontobacco product, other than  
12 matches, in the cigarette vending machine. This section does  
13 not require a retail permit holder to buy a cigarette vendor's  
14 permit if the retail permit holder is in fact the owner of the  
15 cigarette vending machines and the machines are operated in the  
16 location described in the retail permit.

17 Sec. 8. Section 453A.36, subsection 7, paragraph a, Code  
18 2020, is amended to read as follows:

19 a. It shall be unlawful for a person other than a retailer  
20 as defined in [section 453A.1](#) or [453A.42](#) who holds a valid  
21 retail permit, as applicable, to sell tobacco, tobacco  
22 products, ~~alternative nicotine products, vapor products,~~ or  
23 cigarettes at retail.

24 Sec. 9. Section 453A.36A, subsection 1, Code 2020, is  
25 amended to read as follows:

26 1. Except as provided in [section 453A.36, subsection 6,](#)  
27 a retailer shall not sell or offer for sale tobacco, tobacco  
28 products, ~~alternative nicotine products, vapor products,~~ or  
29 cigarettes through the use of a self-service display.

30 Sec. 10. Section 453A.39, Code 2020, is amended to read as  
31 follows:

32 **453A.39 Tobacco, tobacco products, ~~alternative nicotine~~**  
33 **~~products, vapor products,~~ and cigarette samples — restrictions**  
34 **— administration.**

35 1. A manufacturer, distributor, wholesaler, retailer,

1 or distributing agent, or agent thereof, shall not give  
2 away cigarettes, tobacco, or tobacco products at any time  
3 in connection with the manufacturer's, distributor's,  
4 wholesaler's, retailer's, or distributing agent's business or  
5 for promotion of the business or product, except as provided in  
6 subsection 2.

7 2. a. All cigarette samples shall be shipped only to a  
8 distributor that has a permit to stamp cigarettes or little  
9 cigars with Iowa tax. All cigarette samples must have a  
10 cigarette stamp. The manufacturer shipping samples under this  
11 section shall send an affidavit to the director stating the  
12 shipment information, including the date shipped, quantity, and  
13 to whom the samples were shipped. The distributor receiving  
14 the shipment shall send an affidavit to the director stating  
15 the shipment information, including the date shipped, quantity,  
16 and from whom the samples were shipped. These affidavits shall  
17 be duly notarized and submitted to the director at the time of  
18 shipment and receipt of the samples. The distributor shall  
19 pay the tax on samples by separate remittance along with the  
20 affidavit.

21 b. A manufacturer, distributor, wholesaler, retailer,  
22 or distributing agent or agent ~~thereof~~ of a manufacturer,  
23 distributor, wholesaler, retailer, or distributing agent shall  
24 not give away any tobacco, tobacco products, ~~alternative~~  
25 ~~nicotine products, vapor products,~~ or cigarettes to any person  
26 under ~~eighteen~~ twenty-one years of age, or within five hundred  
27 feet of any playground, school, high school, or other facility  
28 when such facility is being used primarily by persons under age  
29 ~~eighteen~~ twenty-one for recreational, educational, or other  
30 purposes.

31 c. Proof of age shall be required if a reasonable person  
32 could conclude on the basis of outward appearance that a  
33 prospective recipient of a sample may be under ~~eighteen~~  
34 twenty-one years of age.

35 Sec. 11. Section 453A.42, subsections 11 and 16, Code 2020,

1 are amended to read as follows:

2 11. *“Retailer”* means any person engaged in the business  
3 of selling tobacco, or tobacco products,~~alternative nicotine~~  
4 ~~products, or vapor products~~ to ultimate consumers.

5 16. *“Tobacco products”* means any product, or component,  
6 part, or accessory of such product, containing, made in  
7 whole or in part from, ordinarily derived from, or designed  
8 to deliver tobacco, a tobacco substitute, or nicotine,  
9 and intended for human consumption whether by chewing,  
10 absorbing, dissolving, inhaling, snorting, sniffing, ingesting,  
11 vaporizing, or by any other means. “Tobacco products” includes  
12 but is not limited to alternative nicotine products and vapor  
13 products; cigars; little cigars as defined herein; cheroots;  
14 stogies; periques; granulated, plug cut, crimp cut, ready  
15 rubbed, and other smoking tobacco; snuff; snuff flower;  
16 cavendish; plug and twist tobacco; fine-cut and other chewing  
17 tobaccos; shorts; or refuse scraps, clippings, cuttings and  
18 sweepings of tobacco, and other kinds and forms of tobacco,  
19 ~~prepared in such manner as to be suitable for chewing or~~  
20 ~~smoking in a pipe or otherwise, or both for chewing and~~  
21 ~~smoking;~~ but shall not include cigarettes as defined in section  
22 453A.1, subsection 4.

23 Sec. 12. Section 453A.42, Code 2020, is amended by adding  
24 the following new subsection:

25 NEW SUBSECTION. 17A. *“Vapor product”* means any product or  
26 device that may be used to deliver any aerosolized or vaporized  
27 substance to the person using the device. *“Vapor product”*  
28 includes an electronic cigarette, electronic cigar, electronic  
29 cigarillo, electronic pipe, electronic hookah, a vape pen, or  
30 similar product or device, and includes any component, part, or  
31 accessory of the product or device, and any substance intended  
32 to be aerosolized or vaporized during the use of the device,  
33 whether or not the substance contains nicotine. *“Vapor product”*  
34 does not include a product authorized for sale as a drug or  
35 device by the United States food and drug administration under

1 chapter V of the federal Food, Drug, and Cosmetic Act.

2 Sec. 13. Section 453A.47A, subsections 1, 2, 4, and 5, Code  
3 2020, are amended to read as follows:

4 1. *Permits required.* A person shall not engage in the  
5 business of a retailer of tobacco, or tobacco products,  
6 ~~alternative nicotine products, or vapor products~~ at any place  
7 of business, or of alternative nicotine products or vapor  
8 products through delivery sales, without first having received  
9 a permit as a retailer.

10 2. *No sales without permit.* A retailer shall not sell any  
11 tobacco, or tobacco products, or sell any alternative nicotine  
12 products, or vapor products through delivery sales until an  
13 application has been filed and the fee prescribed paid for a  
14 permit and until such permit is obtained and only while such  
15 permit is not suspended, unrevoked, or unexpired.

16 4. *Retailer — multiple permits not required — effect of*  
17 *suspension.* A retailer, as defined in [section 453A.1](#), who holds  
18 a permit under [subchapter I of this chapter](#) is not required to  
19 also obtain a retail permit under [this subchapter](#). However,  
20 if a retailer, as defined in [section 453A.1](#), only holds a  
21 permit under [subchapter I of this chapter](#) and that permit is  
22 suspended, revoked, or expired, the retailer shall not sell any  
23 tobacco, or tobacco products, or sell any alternative nicotine  
24 products, or vapor products through delivery sales during the  
25 time which the permit is suspended, revoked, or expired.

26 5. *Separate permit.* A separate retail permit shall be  
27 required of a distributor or subjobber if the distributor or  
28 subjobber sells tobacco, or tobacco products at retail, or  
29 sells any alternative nicotine products, or vapor products at  
30 retail through delivery sales.

31 Sec. 14. Section 453A.47A, subsection 10, paragraph b, Code  
32 2020, is amended to read as follows:

33 *b.* Every retailer shall, when requested by the department,  
34 make additional reports as the department deems necessary and  
35 proper and shall at the request of the department furnish full

1 and complete information pertaining to any transaction of the  
2 retailer involving the purchase or sale or use of tobacco,  
3 or tobacco products, ~~alternative nicotine products, or vapor~~  
4 ~~products.~~

5 Sec. 15. Section 453A.47B, Code 2020, is amended to read as  
6 follows:

7 **453A.47B Requirements for mailing or shipping — alternative**  
8 **nicotine products or vapor products.**

9 A retailer shall not mail, ship, or otherwise cause to be  
10 delivered any alternative nicotine product or vapor product in  
11 connection with a delivery sale unless the retailer meets all  
12 of the following apply conditions:

13 1. Prior to sale to the purchaser, the retailer verifies  
14 that the purchaser is at least ~~eighteen~~ twenty-one years of age  
15 through or by one of the following:

16 a. A commercially available database, or aggregate of  
17 databases, that is regularly used by government and businesses  
18 for the purpose of age and identity verification.

19 b. Obtaining a copy of a valid government-issued document  
20 that provides the name, address, and date of birth of the  
21 purchaser.

22 2. The retailer uses a method of mailing, shipping, or  
23 delivery that requires the signature of a person who is at  
24 least ~~eighteen~~ twenty-one years of age before the shipping  
25 package is released to the purchaser.

26 Sec. 16. Section 805.8C, subsection 3, Code 2020, is amended  
27 to read as follows:

28 3. *Violations related to smoking, tobacco, tobacco products,*  
29 *~~alternative nicotine products, vapor products, and cigarettes.~~*

30 a. For violations described in [section 142D.9, subsection 1,](#)  
31 the scheduled fine is fifty dollars, and is a civil penalty,  
32 and the criminal penalty surcharge under [section 911.1](#) shall  
33 not be added to the penalty, and the court costs pursuant  
34 to [section 805.9, subsection 6,](#) shall not be imposed. If  
35 the civil penalty assessed for a violation described in

1 section 142D.9, subsection 1, is not paid in a timely manner,  
2 a citation shall be issued for the violation in the manner  
3 provided in [section 804.1](#). However, a person under age  
4 eighteen shall not be detained in a secure facility for failure  
5 to pay the civil penalty. The complainant shall not be charged  
6 a filing fee.

7 *b.* For violations of [section 453A.2, subsection 1](#), by an  
8 employee of a retailer, the scheduled fine is as follows:

9 (1) If the violation is a first offense, the scheduled fine  
10 is one hundred dollars.

11 (2) If the violation is a second offense, the scheduled fine  
12 is two hundred fifty dollars.

13 (3) If the violation is a third or subsequent offense, the  
14 scheduled fine is five hundred dollars.

15 *c.* For violations of [section 453A.2, subsection 2](#), the  
16 scheduled fine is as follows and is a civil penalty, and the  
17 criminal penalty surcharge under [section 911.1](#) shall not be  
18 added to the penalty, and the court costs pursuant to section  
19 805.9, subsection 6, shall not be imposed:

20 (1) If the violation is a first offense, the scheduled fine  
21 is fifty dollars.

22 (2) If the violation is a second offense, the scheduled fine  
23 is one hundred dollars.

24 (3) If the violation is a third or subsequent offense, the  
25 scheduled fine is two hundred fifty dollars.

26 Sec. 17. EFFECTIVE DATE. This Act, being deemed of  
27 immediate importance, takes effect upon enactment.>

28 2. Title page, line 1 and 2, by striking <establishing the  
29 minimum age relative to various activities>

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